

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6079 of 1999

With

FIRST APPEAL No 6080 of 1999

With

CIVIL APPLICATION No.4850 of 2000

In

FIRST APPEAL No. 6079 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SHANKERBHAI THOBHABHAI PATEL

Versus

SPECIAL LAND ACQUISITION OFFICER  
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Appearance:

1. First Appeal No. 6079 of 1999

MR AJ PATEL for MR JAYESH M PATEL for Petitioner

MS HB PUNANI, AGP for Respondent No.1

MR AJAY R MEHTA for Respondent No. 2

2. First Appeal No 6080 of 1999

MR AJ PATEL for MR JAYESH M PATEL for Petitioner

MS HB PUNANI, AGP for Respondent No.1

MR AJAY R MEHTA for Respondent No. 2

3. CIVIL APPLICATION No.4850 of 2000

MR AJAY R MEHTA for petitioner

MR AJ PATEL for MR JAYESH M PATEL

for Respondent No.1

MS HB PUNANI, AGP for Respondent No.2

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CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE D.P.BUCH

Date of decision: 08/08/2000

CAV JUDGEMENT

#. Appellants original claimants have filed these two appeals under section 54 of the Land Acquisition Act, 1894 (to be referred to as "Act" for short) read with section 96 of the Code of Civil Procedure, 1908 challenging common judgment and award dated December 4, 1998 passed by the learned Assistant Judge, Mahesana in Land Acquisition References Nos.2904 of 1993 and 2905 of 1993.

#. Civil Application No.4850 of 2000 is filed in First Appeal No.6079 of 1999 under Order 41 Rule 27 of the Code of Civil Procedure by the acquiring body, namely, General Manager, ONGC Ltd., Sabarmati for production of award made by the Land Acquisition Officer on March 20, 1991 in respect of the acquired land of village Dudhai and the copy of the judgment and award rendered by the learned 2nd Joint District Judge, Mahesana in Land Acquisition References Nos. 1060 of 1989 and 1061 of 1989.

#. The agricultural lands situated at village Vidaj were needed for the public purpose of construction of approach road for ONGC. The Deputy General Manager, ONGC, Ltd., sent proposal for permanent acquisition of the lands of village Vidaj to the State Government vide his letter dated November 26, 1990. The said proposal was scrutinised by the State Government and preliminary notification under section 4(1) of the Act was published in the Government gazette on April 30, 1992. After

following usual procedure, declaration under section 6 of the Act was made which was published in the Government gazette on July 1, 1993. Claimants were served with the notices under section 9(3)(4) of the Act and in response to the said notices, claimants lodged their claim before the Land Acquisition Officer claiming compensation of the acquired lands at the rate of Rs.40/- per sq.mtr. The Land Acquisition Officer on the basis of material produced before him made his award on August 4, 1993 and offered compensation of the acquired lands at the rate of Rs.5=50 ps. sq.mtr.

#. Claimants were of the opinion that, compensation offered by the Land Acquisition Officer was inadequate, therefore, they filed applications under section 18 of the Act requesting the Land Acquisition Officer to refer their applications to the District Court, Mahesana for the determination of market value of the acquired lands. Accordingly, the said applications were referred to the District Court, Mahesana wherein it came to be numbered as Land Acquisition References Nos.2904 and 2905 of 1993. In the applications, claimants stated that acquired lands were having high fertility and the claimants were getting irrigation facility. It was claimed that, because of the irrigation facility and fertility of the lands, claimants were raising 2 to 3 crops in a year and were getting annual yield of Rs.12,000/- per bigha. It was further claimed that after deducting 1/3 agricultural expenses claimants were getting net income of Rs.8,000/- per bigha from the sale of agricultural produce. It was also claimed that, nearby lands were put to nonagricultural use for erection of factories, residential societies, warehouses etc. It was also stated that, village Vidaj was having facilities of educational institutions, co-operative societies, telephone, water works, road etc. Claimants claimed compensation in the applications filed under section 18 of the Act at the rate of Rs.40/- per sq.mtr.

#. Respondents contested the applications by filing their written statements inter alia contending that compensation offered by the Land Acquisition Officer was just and adequate. The Land Acquisition Officer had considered potentiality, fertility and other facilities available to the acquired lands before making his award. It was contended that, claimants' applications were barred by the period of limitation prescribed under the Act, and therefore, applications be dismissed with costs.

#. Both the claims references were consolidated and the parties led common evidence in Land Acquisition Reference

No.2094/93. Claimants to substantiate their claim of Rs.40/- per sq.mtr. examined Bhikhabhai Gordhanbhai Patel at Exh.11. The witness produced certified copies of revenue record of acquired lands. The witness also produced the certificate issued by the Talati-cum-mantri at Exh.4 which indicated that villages Nani - Kadi, Dudhai and Vidaj were situated adjoining to each other. The witness produced the certified copy of the judgment and award at Exh.15 of the Reference Court rendered in Land Acquisition References Nos.58 to 61 of 1993 which was decided on July 13, 1998. The said judgment was relating to the acquired lands of village Dudhai wherein market price of the acquired lands was determined at the rate of Rs.21/- per sq.mtr. as on May 26, 1986. Respondents did not examine any witness nor produced documentary evidence before the Reference Court. The Reference Court on over all appreciation of oral as well as documentary evidence deduced that villages Vidaj, Nani - Kadi and Dudhai were adjacent to each other and their boundaries were common. The Reference Court further deduced that, agricultural lands of all the three villages were comparable and having similar fertility. The Reference Court for the determination of the market value of the acquired lands which are subject matter of these appeals mainly relied on the previous award Exh.15 rendered in Land Acquisition References Nos.58 to 61 of 1993 in respect of the acquired lands of village Dudhai which was produced at Exh.15. The acquired lands of previous award Exh.15 were placed under acquisition by issuance of notification published on May 26, 1986 wherein the market price was determined of the acquired lands of village Dudhai at the rate of Rs.21/- per sq.mtr. The previous award Exh.15 was not challenged in the higher forum. The Reference Court further deduced that, the evidence of the witness - Bhikhabhai indicated that, the claimants were getting 40,000/- to 45,000/annual yield per Vigha. Out of which 1/3 was deducted towards agricultural expenses, then net yield would be Rs.30,000/- which was quite exorbitant and exaggerated version of the claimants. The Reference Court deduced that in the pleadings that is in the applications for reference filed under section 18 of the Act, claimants had stated that they were getting yield of Rs.12,000/- per vigha and if 50% is deducted as agricultural expenses, claimants would get net income of Rs.6,000/- per vigha which would be equal to Rs.2/- per sq.mtr. The Reference Court adopted the multiplier of 10 to the figure of Rs.2/- per sq.mtr. and determined the market price of the acquired lands at the rate of Rs.20/per sq.mtr. which have given rise to filing of these appeals by the claimants for enhancement of

compensation of the acquired lands.

#. Learned counsel for the appellants Mr.A.J.Patel and learned advocate for the acquiring body Mr.A.R.Mehta has taken us through the entire record and proceedings produced before the Reference Court. Counsel for the appellants has submitted that, Reference Court has erred in taking resort to yield method when the evidence in the nature of previous award of adjoining village Dudhai was very much produced before the court at Exh.15. Counsel for the appellants further submitted that, previous award Exh.15 was in respect of acquired lands of adjoining village Dudhai wherein notification under section 4(1) of the Act has issued on December 11, 1986. Whereas the present acquired lands were placed under acquisition by the notification dated April 13, 1992. Counsel for the appellants submitted that, therefore, rise in price at the rate of 10% per year should have been adopted and the market value of the present acquired lands ought to have been determined at the rate of 35/- per sq.mtr. Counsel for the appellants further submitted that the claimants had led sufficient evidence that the lands of three villages namely Vidaj, Dudhai and Nani-Kadi were adjacent to each other and agricultural lands were having similar fertility wherein agriculturists were raising similar type of crops. Therefore, it is urged by the learned counsel for the appellants that the claimants should be awarded compensation at the rate of Rs.35/- per sq.mtr. and these appeals be allowed with costs.

#. Learned AGP Ms.H.B.Punani has submitted that, just, adequate and reasonable compensation has been awarded by the Reference Court, and therefore, appeals filed by the claimants deserve to be dismissed.

#. Learned counsel Mr.A.R.Mehta appearing for the respondent No.2 acquiring body has strenuously urged that the Reference court erred in placing reliance on previous award Exh.15 which was in respect of the acquired lands of village Dudhai for the determination of the market value and the present acquired lands of village Vidaj. Learned counsel for the respondent No.2 submitted that, important document which throw light for the determination of the market value of the present acquired lands were not produced in the Reference Court, and therefore, Civil Application No.4850/2000 filed for the production of additional evidence should be allowed. Learned counsel for the respondent no.2 submitted that, previous award Exh.15 is related to the acquired lands of village Dudhai wherein section 4 notification was last published on July 6, 1989. It is submitted by the

learned counsel for the respondent No.2 that the Reference Court had not taken into consideration the crucial date for the determination of the market value of the acquired lands of village Dudhai as July 6, 1989 and instead of that had taken publication of such notification in the Government gazette on December 11, 1986 as the relevant date which is erroneous in view of the provisions of section 4 of the Act. Learned counsel for the respondent No.2, therefore, submitted that award of the Land Acquisition Officer in respect of the acquired lands of village Dudhai ought to have been produced before the Reference Court which indicated that, notification under section 4 was last published on July 6, 1989. Counsel for the respondent No.2 further submitted that, agricultural lands of very village Vidaj were acquired by ONGC for construction of road by notification published in the Government gazette on May 6, 1984 wherein the Reference Court in Land Acquisition References Nos.1060/89 and 1061/89 had determined the market value of the acquired lands of the same village as on May 6, 1984 at the rate of Rs.10=25 ps. per sq.mtr. Counsel for the respondent No.2, therefore, submitted that, judgment and award of Land Acquisition Reference No.1060/89 due to inadvertence could not be produced in the Reference Court, and therefore, the respondent No.2 be permitted to produce the said piece of evidence as an additional evidence in these appeals to determine the market value of the present acquired lands. Similarly, the respondent No.2 by filing Civil Application for production of additional evidence has prayed to produce the previous award of nearby village Nani-kadi rendered in Land Acquisition References Nos.203/84 to 205/84 wherein the market value of village Nani-kadi was determined by the Reference Court at the rate of Rs.7=00 per sq.mtr as of September 2, 1982. Learned counsel for the respondent No.2 strenuously urged that, if additional evidence as sought to be produced by the respondent NO.2 is permitted in these appeals, then the market value determined by the Reference Court can be said to be excessive, but as neither the State of Gujarat nor Acquiring Body has filed appeal against the determination of market value by the Reference Court, it cannot be reduced. It is strenuously urged that, the claimants appeals for enhancement of compensation deserve to be dismissed in view of the previous awards of adjoining village and the same village Vidaj.

##. Before the Reference Court, claimants' witness Bhikhabhai Gordhanbhai Exh.11 had deposed about situation and fertility of the acquired lands as compared to the adjoining lands of village Dudhai. The witness deposed

that the present acquired lands and the agricultural lands of village Dudhai were having the same fertility and the same advantageous features. Map produced at Exh.16 also indicated that the present acquired lands were just touching to the acquired lands of previous award Exh.15. In our opinion, the claimants had led sufficient evidence with regard to the comparison of the present acquired lands and the acquired lands of previous award Exh.15. In spite of documentary evidence in the nature of previous award Exh.15 was available on the record before the Reference Court, in our opinion, the Reference Court had committed error in resorting to the yield method. The Supreme Court in *Special Land Acquisition Officer Vs. P.Mira* AIR 1984 SC 774 has observed that, the function of the court in awarding the compensation under the Act is to ascertain the market value of the land at the date of the notification under section 4(1) and the methods of valuation may be (1) opinion of experts; (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. The Supreme Court further observed that, normally the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available. The Supreme Court in the above stated decision further observed that, in regard to investment in agricultural lands, there are many imponderables inasmuch as the investor runs a much greater risk than the risk that he runs in investment in housing which consists in vagaries of weather and other uncertainties. There is no security of principal, no liquidity of investment nor any certainty of income. The appreciation of principal or income is also uncertain. In view of the settled legal principle as laid down in the above referred to decision of the Supreme Court, in our opinion, when previous award Exh.15 was available on the record of the case, the Reference Court had committed grave error in resorting to yield method for determination of the market value of the present acquired lands. Claimants had not led cogent and reliable evidence with regard to income from the sale of agricultural produces raised on the acquired lands for determination of the market value of the acquired lands on yield basis. Claimants' oral evidence coupled with the documentary evidence of map Exh.16 and the

certificate issued by the Talati-cum-mantri Exh.14 is taken into consideration, then it can be held that the lands of village Dudhai and village Vidaj were having the same fertility and the boundaries of both the villages were adjoining to each other. More over, the map Exh.16 clearly indicates that the present acquired lands and previously acquired lands which were subject matter of the previous award Exh.15 were just touching each other. The evidence of claimants' witness - Bhikhabhai Exh.11 establishes that the acquired lands and acquired lands of previous award Exh.15 where in all respect relevant and comparable and were having the same advantageous features and the agriculturists of both the acquired lands were raising similar crops. In our view, acquired lands of previous award Exh.15 and present acquired lands were having all the similar features, therefore, we are of the opinion that the Reference Court ought to have placed reliance on previous award Exh.15 for the determination of the market value of the present acquired lands. The lands of previous award Exh.15 were placed under the acquisition by the notification issued under section 4(1) on November 28, 1986. In the impugned award, the submission was made by the learned Government Pleader who appeared in the Reference Court that relevant date of the previous award Exh.15 should be taken as July 6, 1989 and not November 28, 1986 because the last date of publication of section 4 notification was July 6, 1989. Reading section 4 of the Act, it became abundantly clear that, publication date should be taken as the last date of publication, that is, July 6, 1989. Therefore, we hold that the market value of the previous award Exh.15 should be taken as on July 6, 1989 at the rate of Rs.21/per sq.mtr. and not November 28, 1986. The present acquired lands were placed under the acquisition by the notification issued under section 4(1) of the Act on April 30, 1992. Thus, there was a gap of nearly three years between the issuance of notification under section 4(1) of the Act of the present acquired lands and previously acquired lands which were subject matter of award Exh.15. It is common knowledge that, prices of the agricultural lands rise every year. The judicial pronouncement of the Supreme Court as well as this court is that the court should normally give rise of the price at 10% every year if there is a gap between the notifications. As there was a gap of three years between two notifications, rise in prices of 30% shall have to be given to the determination of the market value of the acquired lands of previous award Exh.15 which was Rs.21/in July 1989. If, rise of 30% is given to the price of Rs.21/- per sq.mtr. the market value of the present acquired lands would come to Rs.27.30 ps. per



sq.mtr. (Rs.21 + 6.30 = 27.30 ps.). In our opinion, determination of the market value of the present acquired lands as on April 30, 1992 would be Rs.27.30 ps per sq.mtr.

##. The Acquiring Body by filing Civil Application No.4850/2000 has prayed to permit them to produce the copy of the award dated March 29, 1991 of the Land Acquisition Officer made in respect of the acquired lands were the subject matter of the award Exh.15 where last publication of the notification under section 4(1) of the Act was mentioned as July 6, 1989 as observed in foregoing paragraphs. We have already taken the relevant date of determination of market value of the acquired lands of Exh.15 as July 6, 1989 instead of November 28, 1986, and therefore, production of the award dated March 29, 1991 does not survive. The Acquiring Body had also sought permission to permit them to produce previous award rendered in Land Acquisition Reference Nos.1060/89 and 1061/89 in respect of the acquired lands of the same village Vidaj wherein the notification under section 4(1) of the Act was published in official gazette on May 6, 1984 and the Reference Court vide common judgment and award dated July 28, 1994 had determined the market value of the acquired lands of the same village Vidaj at the rate of Rs.10.25 ps. per sq.mtr. as on May 6, 1984. The award which is sought to be produced by the Acquiring Body was already in their possession at the time of hearing of the reference application. In spite of that, it was not produced in the Reference Court. By merely producing previous judgment and award in this court it cannot be said that, lands of previous award were relevant and comparable for the determination of market value for the present acquired lands. The party who wants to produce the previous award and who wants to rely on the said award for determination of market value of later acquired lands has to prove that lands of both acquisition were similar and comparable. If, production of the previous award rendered in Land Acquisition Reference Nos.1060/89 and 1061/89 is permitted to produce in this court, then the appeals shall have to be remanded to the Reference Court for permitting the parties to lead the evidence with regard to comparability of the present acquired lands and acquired lands of the previous award of Land Acquisition Reference Nos.1060/89 and 1061/89. The Supreme Court in AIR 1988 Vol.2 page 2123 in the matter of K.Krishna Reddy and others Vs. The Special Dy. Collector, Land Acquisition Unit II, has observed that, the appellate power of remand ought not to be exercised lightly. It shall not be resorted to unless the award is wholly unintelligible. It shall not be exercised unless

there is total lack of evidence (emphasis supplied).

##. In this case, the appellants had led sufficient evidence for the determination of market value of the present acquired lands. This is not the case wherein there is total lack of evidence. Hence, in our opinion, the production as sought for by the Acquiring Body cannot be permitted. Even otherwise, it does not satisfy the ingredients of Order 41, Rule 27 of the Code of Civil Procedure.

##. The Acquiring Body has also sought permission to produce the previous award rendered in Land Acquisition Reference Nos.817 to 819 of 1988 in respect of the previous acquired lands of the same village Vidaj wherein the market value of the acquired lands was determined at the rate of Rs.10.25 ps. per sq.mtr. as on July 26, 1984. The Acquiring Body has also sought permission to produce the previous award rendered in Land Acquisition Reference Nos.203 to 205 of 1994 in respect of the acquired lands of village Nani-Kadi wherein the market value of those acquired lands was determined at the rate of Rs.7/- per sq.mtr. as on September 2, 1982. In absence of any evidence with regard to comparability and fertility of the present acquired lands with the acquired lands of previous award as mentioned above, the production of the said award cannot be permitted. If, above awards are permitted to be produced as additional evidence at this stage, the matter will have to be remanded to the Reference Court. In view of the judgment of the Supreme Court in the case of K.Krishna Reddy (supra) as this case being not the case of total lack of evidence, the production of additional evidence cannot be permitted. Therefore, in our opinion, the application filed for production of additional evidence by the respondent No.2 - Acquiring Body being Civil Application No.4850/2000 deserves to be rejected as none of the ingredients of Order 41, Rule 27 are satisfied.

##. As a result of the foregoing discussions, we partly allow the appeals filed by the claimants. We determine the market value of the present acquired lands situated at village Vidaj as on April 30, 1992 at the rate of Rs.27.30 ps. per sq.mtr. The award of the Reference Court shall stand modified accordingly. The appellants-claimants shall be entitled to the statutory benefit under section 23(1-A) and 23(2) and interest under section 28 of the Act. However, it is clarified that, claimants shall not be entitled to solatium on the amount under section 23(1-A) and no interest shall be payable on the amount of solatium as per the decision of the Supreme Court reported in State of Maharashtra Vs. Maharan Srawan Hatkar, reported in Judgment Today 1995(2)

SC 583. The appeals are partly allowed with no order as to costs. Office is directed to draw the decree in terms of this judgment.

(M.H.Kadri,J) (D.P.Buch,J)  
(pathan)